

Message Text

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INFO OCT-01 EUR-12 EA-07 IO-13 ISO-00 ERDA-05 AF-08 ARA-06

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NSAE-00 NSC-05 OIC-02 SP-02 PA-01 PRS-01 OES-06 SS-15

USIA-06 SAJ-01 NRC-05 /133 R

DRAFTED BY ACDA/IR:DTHOMPSON

APPROVED BY ACDA/IR:LSLOSS

OSD/ISA:JLANDAUER

PM/DCA:HPHELPS

GC:MMAZEAU

NSC:DELLIOTT

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NTB:RMIKULAK

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TO USMISSION GENEVA PRIORITY

INFO AMEMBASSY BONN

AMEMBASSY LONDON

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E.O. 11652: GDS

TAGS: PARM, CCD

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SUBJECT: CCD - ISSUES CONCERNING ARTICLES I AND IV OF ENMOD

CONVENTION

REF: (A) GENEVA 5825; (B) GENEVA 5831; (C) GENEVA 5886

1. DEFINITIONS OF TERMS "WIDESPREAD, LONG-LASTING, OR SEVERE." DELEGATION'S GUIDANCE FOR SUMMER SESSION STATES OUR WILLINGNESS TO CONSIDER WAYS OF GIVING MORE FORMAL STATUS TO DEFINITIONS OF TERMS "WIDESPREAD, LONG-LASTING, OR SEVERE" ALONG LINES OF US INTERPRETATIONS SET OUT IN CCD ON APRIL 20. SPECIFICALLY, WE ARE PREPARED TO INCLUDE DEFINITIONS IN AN ANNEX TO THE CONVENTION, AS SUGGESTED BY UK AND OTHER DELEGATIONS, IF THIS IS CONSIDERED IMPORTANT AND IF DEFINITIONS ACCEPTABLE TO US CAN GAIN GENERAL ACCEPTANCE. (REF A INDICATES SOVIETS ARE WILLING TO INCLUDE DEFINITIONS IN AN ANNEX.)

2. DEFINITIONS PROPOSED PRIVATELY BY UK (REF B) REFLECT, IN OUR VIEW, AN EXCESSIVELY RIGID APPROACH IN SEEKING PRECISE QUANTIFICATION OF TERMS THAT ARE NECESSARILY QUALITATIVE TO LARGE EXTENT. WE DO NOT BELIEVE THAT IT WOULD BE REALISTIC TO TRY TO ESTABLISH A PRECISE AND INEVITABLY ARBITRARY SET OF STANDARDS. SUBSTANTIVELY, UK DEFINITIONS OF

WIDESPREAD AND LONG-LASTING WOULD APPEAR TO BE GENERALLY CONSISTENT WITH OUR INTERPRETATION OF THESE TERMS. HOWEVER, WE WOULD NOT CONSIDER IT DESIRABLE TO ATTEMPT TO DEFINE "SEVERE" DAMAGE IN TERMS OF DOLLAR VALUE AND, IN ANY EVENT, WOULD NOT REGARD DAMAGE AMOUNTING TO 10,000 US DOLLARS AS "SEVERE."

3. DELEGATION HAS REQUESTED GUIDANCE (REF C) ON EXPANDING DEFINITION OF "SEVERE" TO TAKE INTO ACCOUNT RELATIVE SIZE, DENSITY, AND DISTRIBUTION OF ECONOMIC ASSETS OF A COUNTRY, IN LINE WITH OUR INTERPRETATION THAT EFFECTS WHICH MAY NOT MEET THE "WIDESPREAD" CRITERION MIGHT NONTHELESS CONSTITUTE "SEVERE" DAMAGE TO A SMALL AND DENSELY POPULATED COUNTRY. IN VIEW OF BROAD INTEREST IN GIVING FORMAL RECOGNITION TO THIS ELEMENT OF PROPORTIONALITY, DELEGATION MAY SUGGEST DEFINITION ALONG THE FOLLOWING LINES: "SEVERE REFERS TO ANY DISRUPTION OF THE EXISTING STATE OF THE EN-
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VIRONMENT CAUSING VERY SERIOUS DAMAGE OR INJURY TO PERSONS OR PROPERTY, TAKING INTO ACCOUNT THE PROPORTION OF A STATE PARTY'S TOTAL AREA, POPULATION, AND ECONOMIC RESOURCES AND ASSETS AFFECTED." A DEFINITION ALONG THESE LINES, WHICH SHOULD BE COMPATIBLE WITH SOVIET VIEWS, SHOULD SATISFY THE CONCERN EXPRESSED BY ROMANIA, YUGOSLAVIA, INDIA, AND OTHERS.

4. WITH RESPECT TO ARTICLE IV, WE CAN ACCEPT FORMULATION PROPOSED BY INDIA AS REPORTED PARA 3, REF C, SINCE THIS LANGUAGE IS FULLY CONSISTENT WITH OUR UNDERSTANDING OF ARTICLE IV. IN INFORMAL DISCUSSIONS, DELEGATION SHOULD SEEK CONFIRMATION THAT OTHERS UNDERSTAND THE PRIMARY PURPOSE OF ARTICLE IV IS TO ENSURE THAT STATES PARTIES PROHIBIT PRIVATE PERSONS OR ENTITIES UNDER THEIR JURISDICTION OR CONTROL FROM ENGAGING IN ACTIVITIES THAT, IF CONDUCTED BY A STATE PARTY ITSELF, WOULD CONSTITUTE A VIOLATION OF THE PROVISIONS OF THE CONVENTION. IF THIS IS NOT GENERAL UNDERSTANDING, WE MAY WISH TO RECONSIDER ADEQUACY OF PRESENT LANGUAGE OR TO PLACE ON RECORD OUR UNDERSTANDING THAT THIS IS WHAT IS MEANT. KISSINGER

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Message Attributes

Automatic Decaptoning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: ENMOD, DISARMAMENT, ENVIRONMENT, INSTRUCTIONS, COMMITTEE MEETINGS, MEETING REPORTS, MEETING DELEGATIONS
Control Number: n/a
Copy: SINGLE
Draft Date: 29 JUL 1976
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: GolinoFR
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1976STATE188129
Document Source: CORE
Document Unique ID: 00
Drafter: DTHOMPSON
Enclosure: n/a
Executive Order: GS
Errors: N/A
Film Number: D760293-1000
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1976/newtext/t1976078/aaaaagkl.tel
Line Count: 128
Locator: TEXT ON-LINE, ON MICROFILM
Office: ORIGIN ACDA
Original Classification: CONFIDENTIAL
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators: n/a
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: n/a
Reference: 76 GENEVA 5825, 76 GENEVA 5831, 76 GENEVA 5886
Review Action: RELEASED, APPROVED
Review Authority: GolinoFR
Review Comment: n/a
Review Content Flags:
Review Date: 12 APR 2004
Review Event:
Review Exemptions: n/a
Review History: RELEASED <12 APR 2004 by greeneet>; APPROVED <13 APR 2004 by GolinoFR>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
04 MAY 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: CCD - ISSUES CONCERNING ARTICLES I AND IV OF ENMOD CONVENTION
TAGS: PARM, US, CCD
To: GENEVA
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006